

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK DOUGLAS SCOTT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50323

**FILED**

AUG 13 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of robbery. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court adjudicated appellant Frederick Douglas Scott a habitual criminal and sentenced him to a prison term of 10 to 25 years.

Scott contends that the State did not provide adequate notice for him to defend against his habitual criminal adjudication. Specifically, Scott contends that the notice was insufficient because it did not specify whether the State was charging him under NRS 207.010(1)(a), subjecting him to punishment for a category B felony, or under NRS 207.010(1)(b), subjecting him to punishment for a category A felony.

Initially, we note that Scott did not object to the notice below. Failure to raise an objection in the district court generally precludes appellate consideration of an issue absent plain error affecting substantial

rights.<sup>1</sup> Generally, an appellant must show that he was prejudiced by a particular error in order to prove that it affected his substantial rights.<sup>2</sup>

The State provided notice that it intended to seek habitual criminal adjudication pursuant to NRS 207.010.<sup>3</sup> Prior to sentencing, the State amended the notice to contain an additional out-of-state prior conviction. The amended notice filed on May 8, 2007, identified four prior felony convictions. Defense counsel requested, and was granted, a continuance in order to discuss the additional conviction with Scott.

Because Scott was noticed by the State that it would be relying on four prior felony convictions to support the habitual criminal adjudication, Scott was on notice that he could be adjudicated pursuant to NRS 207.010(1)(b). Scott has not demonstrated plain error that affected his substantial rights.

Next, Scott contends that the State failed to present the requisite number of convictions to support adjudication under NRS 207.010(1)(b). Specifically, Scott contends that the district court dismissed three of his convictions as stale, and the State failed to present proof of his misdemeanor convictions. We conclude that this claim lacks merit.

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<sup>1</sup>See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

<sup>2</sup>Id.

<sup>3</sup>The initial information is not included in the appendix. Any reference to the initial information is based on statements in the fast-track briefs.

NRS 207.010 “makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of the district court.”<sup>4</sup> At sentencing, the State presented evidence of five prior felony convictions for Scott. Although the district court stated that three of Scott’s prior felony convictions were older, the record is clear that it considered all five of Scott’s prior felony convictions when adjudicating him as a habitual criminal. Because the State presented evidence of the requisite number of prior felony convictions to support habitual criminal adjudication under NRS 207.010(1)(b), the State did not need to present proof of the misdemeanor convictions. We conclude that Scott was properly adjudicated as a habitual criminal under NRS 207.010(1)(b).

To the extent that Scott contends that the district court erred by considering his 45 misdemeanor arrests when imposing sentence, we conclude this claim lacks merit. The district court may “consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant.”<sup>5</sup> Accordingly, we conclude that the district court’s consideration of Scott’s criminal history, and in particular, his 45 misdemeanor arrests, was not improper or an abuse of discretion.

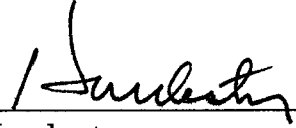
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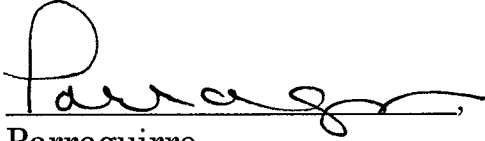
<sup>4</sup>Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (citing French v. State, 98 Nev. 235, 645 P.2d 440 (1982)).

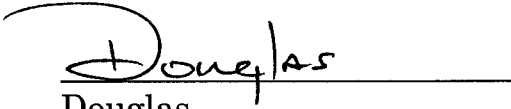
<sup>5</sup>Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998); see also NRS 176.015(6).

Having considered Scott's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Steven P. Elliott, District Judge  
Michael V. Roth  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk